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IN THE  
**SUPREME COURT OF THE UNITED STATES.**

OCTOBER TERM, 1944.

No. **1326** 96

LOUIS STOCKSTROM,  
Petitioner,

vs.

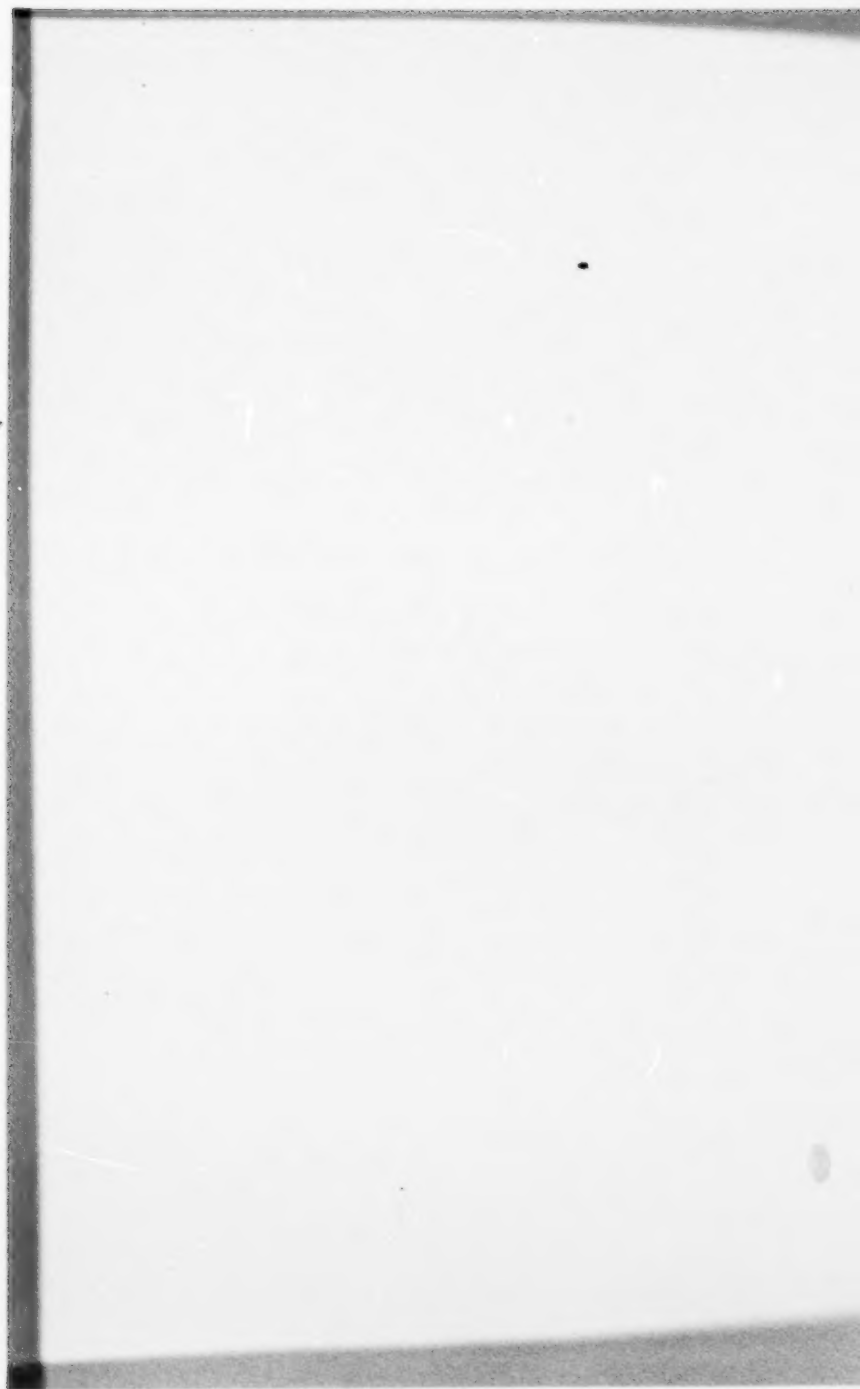
COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

**PETITION FOR WRIT OF CERTIORARI**  
To the United States Circuit Court of Appeals  
for the Eighth Circuit  
and  
**BRIEF IN SUPPORT.**

THOMAS R. REYBURN,  
Attorney for Petitioner.

CHASE MORSEY,  
RICHARD A. AUSTIN,  
Of Counsel.

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LOUIS STOCKSTROM,  
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**PETITION FOR WRIT OF CERTIORARI**  
to the United States Circuit Court of Appeals  
for the Eighth Circuit.

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The petitioner, Louis Stockstrom, prays that a writ of certiorari issue to review a judgment of the Circuit Court of Appeals for the Eighth Circuit affirming a judgment of the Tax Court of the United States.

**SUMMARY STATEMENT.**

The ultimate question is whether the control exercised by petitioner as sole trustee of the property in ten irrevocable trusts created by him for his children and grandchildren, is equivalent to ownership of the trust property

for the purpose of taxing the income to him under Sec. 22 (a) of the Internal Revenue Code (26 U. S. C. A., Section 22 (a)).

Petitioner is a successful business man of St. Louis, Missouri (R. 20-23). He has three children and seven grandchildren. The youngest child is forty-nine years of age. Each child is married and maintains a home apart from petitioner. The grandchildren live apart from petitioner with their respective parents (R. 20).

On January 6, 1936, petitioner executed four declarations of trust which are in all material respects the same. Three of the declarations created separate trust estates for his three children; the fourth created ~~a~~ separate trust estate for each of his seven grandchildren (R. 20). "Item One" of each declaration gave petitioner, as trustee, broad administrative powers over corpus of the trust (R. 23, 26, 37-40, 51-53, 64-65).

The trusts for the children are to continue absolutely during their lives and the lives of their children. Income of each child's trust is distributable to the child and his children "in such proportions as will provide each such beneficiary with funds sufficient to enable him or her to live in a manner befitting his or her accustomed standard of living." Upon termination of the life estates, corpus is distributable to testamentary appointees or lineal descendants of the last life tenants (R. 26-40, 53-67, 68-69, 70-71, 72-73).

The trusts for the grandchildren are to continue during their lives. Income of each trust may be distributed to the grandchild or accumulated. Upon termination of the life estates for the grandchildren, corpus of the trusts goes to their testamentary appointees or lineal descendants (R. 67-73).

The trusts were irrevocable, and petitioner can never receive corpus or income from any of them (R. 34, 47, 60, 79).

The Tax Court held that petitioner had "extraordinarily broad administrative powers" over corpus of each trust and "substantial" control of the income; that the combined control of corpus and income made the doctrine of **Helvering v. Clifford**, 309 U. S. 331, applicable and the income of the trusts taxable to petitioner (R. 87-95).

The Court of Appeals, affirming the decision of the Tax Court, said that it was not able to say that the Tax Court had erred in holding that petitioner's combined control of the trust property and its income was equivalent to its economic ownership for purposes of Section 22 (a) (R. 106-119).

### **JURISDICTION.**

The judgment of the Circuit Court of Appeals was entered March 23, 1945 (R. 120). Petition for rehearing timely filed by petitioner (R. 121) was denied on April 18, 1945 (R. 137). The jurisdiction of this Court is invoked under Section 240, as amended February 15, 1925, of the Judicial Code (28 U. S. C. A., Section 347 (a)).

### **STATUTE AND REGULATIONS INVOLVED**

Section 22 (a) of the Internal Revenue Code and Treasury Regulations 103, promulgated under the Internal Revenue Code are set out in the appendix.

### **QUESTIONS PRESENTED.**

1. Is the petitioner taxable on the income of the trusts because, as trustee, he has broad administrative powers over corpora and power,—(a) in the children's trusts, to distribute the income to the child or the child's children in accordance with a standard, and (b) in the grandchildren's trusts, to distribute or accumulate the income?

2. Is petitioner the owner of the trust property for the purpose of taxation under Section 22 (a) of the Internal Revenue Code?

3. Can petitioner realize economic gain from the control vested in him as trustee over corpora and income of the trusts?

4. Are the satisfactions derivable by petitioner from the control vested in him as trustee over corpora and income of the trusts, the equivalent of economic gain or benefit?

5. Is the doctrine of **Helvering v. Clifford**, 309 U. S. 331, applicable to a long-term trust from which the grantor-trustee can never receive corpus or income, merely because he has broad administrative powers over corpus and limited control over distribution of the income?

#### **REASONS RELIED ON FOR GRANTING THE WRIT.**

The decision conflicts with the decisions of the Circuit Court of Appeals for the Seventh Circuit in the cases of **Commissioner v. Katz**, 139 Fed. (2d) 107, and **Commissioner v. Armour**, 125 Fed. (2d) 467, and conflicts with the decision of the Circuit Court of Appeals for the Second Circuit in the case of **Phipps v. Commissioner**, 137 Fed. (2d) 141.

The decision conflicts with the decisions of this Court in **Helvering v. Stuart**, 317 U. S. 154; **Eisner v. Macomber**, 252 U. S. 189; **Hooper v. Tax Commission**, 284 U. S. 206, and **Heiner v. Donan**, 285 U. S. 312.

The ruling by the Court of Appeals that a grantor-trustee of a trust is the economic owner of the trust property for the purpose of taxation because he has broad administrative powers over the corpus and has control



over the income, is a decision on an important question of federal law which has not been, but should be, settled by this Court.

**CONCLUSION.**

It is respectfully submitted that this petition for writ of certiorari should be granted.

THOMAS R. REYBURN,  
Counsel for Petitioner.

CHASE MORSEY,  
RICHARD A. AUSTIN,  
Of Counsel.